

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ABRAHAM SHAFFIR
YETTA SHAFFIR

Claim No. CU-2329

Decision No. CU 4477

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$109,202.53, was presented by ABRAHAM SHAFFIR based upon the asserted ownership and loss of a stock interest in Encaje Cubano, S.A., and a one-half interest in Telson & Cia. Claimant stated that he has been a national of the United States since his naturalization on August 7, 1941. Subsequently, YETTA SHAFFIR petitioned to join as a co-claimant. This matter having been considered, it is so ordered and YETTA SHAFFIR, a national of the United States since her naturalization on February 13, 1933, is joined as claimant herein.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any

rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The evidence establishes that the claimants jointly owned 101 shares of stock in Encaje Cubano, S.A. (which claimants describe as 12.5 percent interest), and a one-half interest in a partnership known as Telson & Cia. Encaje Cubano, S.A. was engaged in the manufacture of lace and Telson & Cia., also known as Casa Adolfo, was engaged in selling lace.

The record contains a copy of an Acta of the Minister of Labor intervening "Casa Adolfo" as of October 11, 1961. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.) The Commission finds, however, in the absence of evidence to the contrary, that Encaje Cubano, S.A. was taken pursuant to Law 1076 on December 5, 1962. (See Claim of Perkins Marine Lamp and Hardware Corporation, Claim No. CU-0232, 1967 FCSC Ann. Rep. 42.)

Since these Cuban firms were organized under the laws of Cuba, they do not qualify as "nationals of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that a stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, supra.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Encaje Cubano, S.A.

The record includes a copy of a balance sheet dated August 31, 1960, which reflects the following in Cuban pesos, which were on a par with the United States dollar:

ASSETS

Current Assets

Continental Bank		\$ 1,292.50	
Account Receivable - Others		8.36	
Account Receivable		10,323.50	
Advances on Employees Salaries		6.00	
Account Payable		10,488.14	
Petty Cash		568.25	
Inventory 8/31/60		<u>23,616.54</u>	
<u>Total Current Assets</u>			\$ 46,303.29

Fixed Assets

Machinery	\$64,442.46		
Less: Reserve for Depreciation	<u>659.23</u>	\$63,783.23	
Furniture		<u>809.80</u>	
<u>Total Fixed Assets</u>			64,593.03

Prepaid Assets

Organization Expenses	\$ 4,556.78		
Less: Reserve	<u>390.98</u>	\$ 4,165.80	
Installation Expenses		<u>1,134.86</u>	
<u>Total Prepaid Assets</u>			<u>5,300.66</u>

<u>TOTAL ASSETS</u>			<u>\$116,196.98</u>
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LIABILITIES

Current Liabilities

Continental Bank - Loan	\$10,000.00		
Social Laws Payable	323.06		
Textilera Tricana	3,273.89		
Account Payable Others	60.00		
<u>Total Liabilities</u>			\$ 13,656.95

Capital

Authorized	\$250,000.00		
Less: Unissued Capital	<u>169,600.00</u>	\$80,400.00	
<u>Surplus:</u>			
Balance 8/31/60	\$[14,449.35]		
Plus: Previous Years			
Adjustments	<u>[285.83]</u>		
	\$[14,735.18]		
<u>Profit</u>	<u>36,875.21</u>	<u>22,140.03</u>	<u>102,540.03</u>
<u>TOTAL LIABILITIES AND CAPITAL</u>			<u>\$116,196.98</u>

It is noted that the item "Account Payable \$10,488.14" is listed as an Asset when in fact it is a Liability, which is substantiated in the accountant's notes annexed to the balance sheet. Therefore the Commission has subtracted this item from Assets and added it to Liabilities.

Thus, the calculation of net worth of Encaje Cubano, S.A. is as follows:

Total Assets	\$105,708.84
Less Liabilities	<u>24,145.09</u>
Net Worth	<u>\$ 81,563.75</u>

The Commission finds, based upon the evidence of record, that Encaje Cubano, S.A. had outstanding 804 shares of stock on the date of taking and concludes that the dollar loss sustained in connection with the ownership of a stock interest in Encaje Cubano, S.A. was \$101.4474 per share of stock.

Accordingly, the Commission finds that claimants, as joint owners of 101 shares of stock in Encaje Cubano, S.A., suffered a loss in the aggregate amount of \$10,246.19 within the meaning of Title V of the Act, as a result of the taking of Encaje Cubano, S.A. by the Government of Cuba on December 5, 1962.

Telson & Cia.

The record includes, inter alia, a copy of a trial balance sheet dated September 1960, and an Amended Partnership Agreement of April 20, 1959 from

CU-2329

which it appears that ABRAHAM SHAFFIR's contribution to the partnership was \$99,000.00.

From the trial balance sheet of September 1960, which is of record, it appears that claimants' interest had a value of \$99,102.53 as asserted.

Based upon the entire record including the September 1960 trial balance sheet, the Commission finds that the one-half interest in Telson & Cia. had a value of \$99,102.53 on the date of loss and concludes that the claimants as joint owners of this interest suffered a loss in the amount of \$99,102.53 within the meaning of Title V of the Act.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimants. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimants as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that ABRAHAM SHAFFIR suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-four Thousand Six Hundred Seventy-four Dollars and Thirty-six Cents (\$54,674.36) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

CU-2329

The Commission certifies that YETTA SHAFFIR suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-four Thousand Six Hundred Seventy-four Dollars and Thirty-six Cents (\$54,674.36) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

5 FEB 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-2329